

ESTTA Tracking number: **ESTTA953492**

Filing date: **02/11/2019**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91245558
Party	Defendant Goode Enterprise Solutions, Inc.
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Submission	Answer
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Date	02/11/2019
Attachments	APPLICANT RESPONSE BLUE AVIANS opposition ttabvue-91245558-OPP.pdf(372324 bytes )

Opposition No. 91245558

### **Relevant Procedural Background**

The current Opposition proceeding was instituted by Gaia, Inc. (the “Opposer” or “Party”) on December 31, 2018. Parties have been engaged in settlement talks related to the Mark--and other matters of dispute between the Parties--since at least June of 2018. Applicant has initiated many good-faith attempts to settle all issues between the Parties but has been met with somewhat sporadic engagement on the part of Opposer. Applicant requested and received a consent from Opposer for a 30-day extension last week. The stipulation of extension was filed on February 8, 2019 and has not yet been granted or denied.

The deadline for Applicant to respond to the Opposition was February 9, 2019 which fell on a weekend, thus extending Applicants answer deadline to February 11, 2019. Out of an abundance of caution and respect for the Rules outlined in the Trademark Board Manual of Procedure, Applicant tenders this preliminary answer but respectfully requests the stipulated extension of deadlines be granted so that Applicant may further investigate the claims made by Opposer and so that the Parties may attempt to settle this matter outside of litigation.

### **Parties**

1. Applicant has insufficient facts to either admit or deny the claims in Paragraph 1 of the, and as so states this claim is DENIED.
2. ADMITTED, that Applicant is owned and controlled by an individual named James Corey Goode ("Goode") the other allegations or conclusions of law of Paragraph 2 are DENIED.

### **Opposed Application**

3. Paragraph 3 is ADMITTED as to the date of Applicant's filing of the Application, the rest is DENIED.

### **Dealings Between the Parties**

4. Paragraph 4 is DENIED.

5. Paragraph 5 is DENIED as to the mischaracterizations of the relationship and conversations between the parties. Further, Applicant does not attempt to speculate as to Opposer's state of mind and as to those allegations they are DENIED. Applicant further DENIES the allegations in footnote to Paragraph 5.

6. Paragraph 6 is DENIED as to the mischaracterizations Mr. Goode's work produced on the show Cosmic Disclosure. Further, Applicant will not attempt to speculate as to Opposer's state of mind and as to those allegations they are DENIED. Finally, Applicant has insufficient facts to either admit or deny some of the claims, and as so states this claim to that extent is DENIED.

7. Paragraph 7 is DENIED.

8. Paragraph 8 is DENIED.

9. Paragraph 9 is replete with mischaracterizations and as such is DENIED.

### **Blue Avians Is Not a Generic Term**

10. Paragraph 10 is DENIED.

11. Paragraph 11 is DENIED.

12. Paragraph 12 is DENIED.

13. Paragraph 13 is a mischaracterization of facts and/or conclusion of law and

as such is DENIED.

14. Applicant has insufficient facts to either admit or deny some of the claims in Paragraph 14, and to that extent it is DENIED.

15. Paragraph 15 is DENIED.

16. Paragraph 16 is a mischaracterization of facts and/or conclusion of law and as such is DENIED.

**Facts Related to Alleged Non-Use of the Opposed Mark**

17. Paragraph 17 is DENIED.

18. Paragraph 18 is DENIED.

19. Paragraph 19 is DENIED.

20. Paragraph 20 is DENIED.

21. Paragraph 21 is DENIED.

**FIRST CLAIM FOR RELIEF**  
**(Applied-For Mark Is Generic)**

22. Paragraph 22 does not require a response from Applicant.

23. Paragraph 23 is DENIED.

24. Paragraph 24 is DENIED.

**SECOND CLAIM FOR RELIEF**  
**(Applied-For Mark Is Not in Actual Use For All Goods  
And Services Identified in the Opposed Application)**

25. Paragraph 25 does not require a response from Applicant.

26. Paragraph 26 is DENIED.

**THIRD CLAIM FOR RELIEF**  
**(Fraud)**

- 27. Paragraph 27 does not require a response from Applicant.
- 28. ADMITTED.
- 29. Paragraph 29 is DENIED.

**AFFIRMATIVE DEFENSES**

Applicant expressly reserves the right to plead additional affirmative and other defenses should any such defenses be revealed by discovery in this case. As and for its affirmative and other defenses, Applicant states as follows:

**First Affirmative Defense**

The notice of opposition fails to state a claim upon which relief can be granted.

**Second Affirmative Defense**

Opposer does not have standing to oppose the Mark.

**Third Affirmative Defense**

Applicant alleges on information and belief that as a result of opposer's own acts

and/or omissions, the opposition is barred by the doctrine of laches.

#### **Fourth Affirmative Defense**

Applicant alleges on information and belief that the opposition is barred by the doctrine of estoppel.

#### **Fifth Affirmative Defense**

Applicant alleges on information and belief that as a result of its own acts and omissions, opposer has waived any right to pursue its opposition.

#### **Sixth Affirmative Defense**

Applicant alleges on information and belief that the opposition is barred by the doctrine of acquiescence.

#### **Seventh Affirmative Defense**

Applicant alleges on information and belief that the opposition is barred by the doctrine of unclean hands.

#### **Eighth Affirmative Defense**

Any and all acts alleged to have been committed by Applicant were performed with lack of knowledge and lack of willful intent.

### **Ninth Affirmative Defense**

As a result of Applicant's continuous use of the Mark since the time of Applicant's adoption thereof, the Mark has developed significant goodwill among the consuming public and consumer acceptance of the services offered by Applicant in conjunction with the Mark. Such goodwill and widespread usage has caused the Mark to acquire distinctiveness with respect to Applicant and caused the Mark to become a valuable asset of Applicant.

### **COUNTERCLAIMS**

Applicant is still investigating the substance of the claims asserted against in the Opposition by Opposer. To date Applicant is not aware of any possible counterclaims it may have against Opposer but reserves the right to assert any that develop as the case progresses per *Jive Software, Inc. v. Jive Communications, Inc.*, Opposition No. 91218826 (parent) (December 20, 2017) [precedential].

### **CONCLUSION**

TO THE EXTENT that any allegation is not expressly ADMITTED or DENIED, it is DENIED. Applicant reserves the right to amend any of the foregoing as information becomes available to Applicant.

WHEREFORE, Applicant requests that the notice of opposition be dismissed with prejudice, together with whatever other relief the Board may deem appropriate.



Dated: February 11, 2019

Respectfully Submitted,

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